



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Susan Arceneaux

[REDACTED]
Fairfax, VA 22032

APR 21 2005

RE: MUR 5652

Dear Ms. Arceneaux:

On April 5, 2005, the Federal Election Commission found that there is reason to believe you, in your personal capacity, violated 2 U.S.C. § 441b(a), 2 U.S.C. § 441a(f), 2 U.S.C. § 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a) and (b), and 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis and the Audit Report, which more fully explain the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred [REDACTED]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

[REDACTED]

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Susan Arceneaux
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jack A. Gould, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Audit Report
Procedures
Designation of Counsel Form
[Redacted]

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Susan Arceneaux

MUR 5652

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6
7 **I. GENERATION OF THE MATTER**

8 This matter was generated based on information ascertained by the Federal Election
9 Commission ("the Commission") in the normal course of carrying out its supervisory
10 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

11 **II. BACKGROUND**

12 Susan Arceneaux was assistant treasurer of Terrell for Senate ("the Committee"). The
13 Committee is the principal campaign committee for Suzanne Haik Terrell, who was a candidate
14 for the U.S. Senate from Louisiana in 2002. Arceneaux, who was an employee of Political
15 Compliance Services, Inc., a company that specializes in Federal Election Commission
16 compliance services, received copies of the contribution checks, and prepared and signed all of
17 the Committee's disclosure reports during the 2002 election cycle. The Committee paid Political
18 Compliance Services, Inc. for Arceneaux's services.

19 **III. ANALYSIS**

20 The Federal Election Campaign Act of 1971, as amended ("the Act"),¹ places legal
21 obligations on committee treasurers, the violation of which makes them personally liable.
22 *See* FEC v. Toledano, 317 F.3d 939, 947 (9th Cir. 2003) ("The Act requires every political

¹ The facts relevant to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, the activity prior to BCRA is subject to the provisions of the Act as it existed at that time and the activity after BCRA is subject to the Act as amended by BCRA. However, the statutory provisions and Commission regulations at issue were not amended by BCRA in a manner relevant to the activity in this matter.

committee to have a treasurer, 2 U.S.C. § 432(a), and holds him [or her] personally responsible for the committee's recordkeeping and reporting duties, *Id.* §§ 432(c)-(d), 434(a)."). *See also* 11 C.F.R. § 104.14(d) ("Each treasurer of a political committee . . . shall be personally responsible for the timely and complete filing of the [committee's] report or statement and for the accuracy of any information or statement contained in it."). In addition, a treasurer is responsible for examining all contributions received for evidence of illegality and for ascertaining when contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limits of the Act and 11 C.F.R. §§ 110.1 and 110.2 of the Commission's regulations. *See* 11 C.F.R. § 103.3(b). If a contribution presents a genuine issue as to whether it was made from a prohibited source, exceeds the contribution limits on its face or when aggregated with other contributions from the same individual, or if a treasurer later discovers that a contribution is illegal based on new evidence not available at the time of receipt or deposit, a treasurer must follow the procedures set forth at 11 C.F.R. § 103.3(b).

It appears that Arceneaux recklessly failed to fulfill the duties imposed on treasurers by provisions of the Act and the Commission's regulations, giving rise to the following violations of the Act:

- The Committee knowingly accepted 65 corporate contributions totaling \$64,600 in violation of 2 U.S.C. § 441b(a). Eighteen of the contributor checks were clearly from corporations as the name and address fields on the face of the checks indicated that these checks were drawn on corporate accounts. Other checks, in which the name and address fields on the face of the checks denoted that they were from Limited Liability Companies ("LLCs") also appeared to be illegal because the LLCs at issue elected to be treated as corporations by the Internal Revenue Service. Arceneaux apparently made no effort to

1 verify the legal status of those contributions. During the audit process, the Committee's
2 attorney sent letters to apparent corporate contributors asking for information regarding
3 the contributor's corporate status. The Committee, in its amended 2002 Year-End
4 Report, acknowledged that all of the LLCs at issue made corporate contributions.

5 *See Amended 2002 Year-End Report (August 18, 2004).*

6 • Arceneaux prepared the disclosure reports, which included such a large number of
7 excessive contributions from individuals and political committees so as to suggest a lack
8 of attention. Notably, the Final Audit Report concluded the Committee knowingly
9 accepted 541 excessive contributions totaling \$552,773 in violation of 2 U.S.C. § 441a(f).

10 • The Committee knowingly accepted \$100,000 from the proceeds of an unsecured
11 bank loan in violation of 2 U.S.C. § 441b(a). Had Arceneaux reviewed the bank loan
12 documents, which were made available to the Commission's auditors, she would have
13 seen that the loan was unsecured.

14 • The Committee's disclosure reports prepared by Arceneaux understated total receipts
15 by \$693,576 and total disbursements by \$960,876, and overstated cash on hand by
16 \$281,800 in violation of 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(a) and (b).

17 • The Committee's disclosure reports prepared by Arceneaux failed to itemize
18 contributions from individuals in violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R.
19 § 104.3(a)(4)(i), and failed to itemize contributions from political committees in violation
20 of 2 U.S.C. § 434(b)(3)(B) and 11 C.F.R. § 104.3(a)(4)(ii). It appears that Arceneaux
21 failed to use her best efforts to obtain, maintain, and submit the missing information.
22 11 C.F.R. § 104.7(b).

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1 • The Committee's disclosure reports prepared by Arceneaux failed to disclose and
2 itemize \$302,000 in proceeds from joint fundraising activity in violation of 2 U.S.C.
3 § 434(b)(2)(F) and 11 C.F.R. § 102.17(c)(8)(i)(B), and failed to itemize the Committee's
4 share of the gross receipts as contributions from the original contributors as required on
5 memo Schedules A for any of the \$420,500 in transfers of joint fundraising proceeds.
6 11 C.F.R. § 104.3(a)(4).

7 • While Arceneaux filed some 48-hour notices, she failed to file 48-hour notices for 77
8 contributions totaling \$106,100 in violation of 2 U.S.C. § 434(a)(2) and 11 C.F.R.
9 § 104.5(f), an astonishing number considering that she is a professional compliance
10 consultant.

11 Therefore, there is reason to believe that Susan Arceneaux, in her personal capacity as
12 former assistant treasurer of the Committee, violated 2 U.S.C. § 441b(a), 2 U.S.C. § 441a(f),
13 2 U.S.C. § 434(b) and 11 C.F.R. §§ 102.17(c)(8)(i)(B) and 104.3(a) and (b), and 2 U.S.C.
14 § 434(a)(6) and 11 C.F.R. § 104.5(f).

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Report of the Audit Division on Terrell for Senate

July 19, 2002 – December 31, 2002

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

Terrell for Senate (TFS) is the principal campaign committee for Suzanne Haik Terrell, Republican candidate for the U.S. Senate from the state of Louisiana, and is headquartered in Alexandria, Virginia. For more information, see the chart on the Campaign Organization, p.2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 2,532,544
○ From Political Party Committees	154,726
○ From Other Political Committees	665,149
○ Transfers from Other Authorized Committees	420,500
○ Loans – Made or Guaranteed by the Candidate	300,000
○ Total Receipts	\$ 4,072,919
• Disbursements	
○ Total Operating & Other Disbursements	\$ 3,721,155

Findings and Recommendations (p. 3)

- Receipt of Prohibited Corporate Contributions (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Receipt of Bank Loan (Finding 3)
- Misstatement of Financial Activity (Finding 4)
- Failure to Itemize Contributions from Individuals (Finding 5)
- Failure to Itemize Contributions from Political Committees (Finding 6)
- Disclosure of Proceeds from Joint Fundraising Activity (Finding 7)
- Disclosure of Occupation and Name of Employer (Finding 8)
- Failure to File 48-Hour Notices (Finding 9)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of Terrell for Senate (TFS), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The consistency between reported figures and bank records.
5. The completeness of records.
6. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 7, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are primarily those that were in effect prior to November 7, 2002.

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Part II

Overview of Campaign

Campaign Organization

Important Dates	Terrell for Senate
• Date of Registration	July 16, 2002
• Audit Coverage	July 19, 2002 - December 31, 2002
Headquarters	Alexandria, Virginia
Bank Information	
• Bank Depositories	1
• Bank Accounts	1 Checking, 1 Money Manager (Savings)
Treasurer	
• Treasurer When Audit Was Conducted	Bryan Blades (Starting March 31, 2003) Justin Schmidt (Starting December 22, 2003)
• Treasurer During Period Covered by Audit	Cliff Newlin
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting, Recordkeeping Tasks and other Day-to-Day Operations	Vita Levantino - Consultant

Overview of Financial Activity

(Audited Amounts)

Cash on hand @ July 19, 2002	\$ 0
Receipts	
o From Individuals	\$ 2,532,544
o From Political Party Committees	154,726
o From Other Political Committees	665,149
o Transfers from Other Authorized Committees	420,500
o Loans - Made or Guaranteed by the Candidate	300,000
Total Receipts	\$ 4,072,919
Total Operating and Other Disbursements	\$ 3,721,155
Cash on hand @ December 31, 2002	\$ 351,764

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Part III

Summaries

The interim audit report (IAR) was forwarded to TFS for response on May 21, 2004. The Audit staff contacted counsel for the committee and verified receipt of the report. The response was due on June 23, 2004. TFS requested and received a 15-day extension to July 8, 2004 to respond to the IAR. On July 20, 2004, TFS submitted (draft) amended reports for the Audit staff's review prior to filing them with the Commission. Our review indicated the amendments were deficient; materially resolving only two of the findings. This information was relayed to TFS representatives via email on July 21, 2004. TFS representatives indicated they are working on a response. To date, no further response has been received; nor amended reports filed with the Commission.

Findings and Recommendations

Finding 1. Receipt of Prohibited Corporate Contributions

TFS received 65 prohibited contributions totaling \$64,600 from 47 different Limited Liability Companies (LLCs) and corporate entities. The Audit staff recommended that TFS either provide evidence that these contributions were not from prohibited sources or refund the \$64,600. (For more detail, see p. 5)

Finding 2. Receipt of Contributions that Exceed Limits

A review of contributions from individuals and political committees identified 541 contributions, totaling \$552,773, which exceeded the contribution limits. In some instances the contributions were solicited after the election to which they relate but there were insufficient net debts to allow TFS to keep the contribution. The Audit staff recommended that TFS either provide evidence that the identified contributions were not in excess of the limitations or refund \$552,773. (For more detail, see p. 7)

Finding 3. Receipt of Bank Loan

The Candidate loaned TFS \$101,000 from the proceeds of a bank loan. The Audit staff was unable to determine if the bank perfected its security interest in collateral for the loan. The Audit staff recommended that TFS provide documentation to show the loan was properly secured. (For more detail, see p. 10)

Finding 4. Misstatement of Financial Activity

TFS misstated receipts, disbursements, and the ending cash balance during 2002. The Audit staff recommended that TFS amend its reports to correct the misstatements. (For more detail, see p. 11)

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Finding 5. Failure to Itemize Contributions from Individuals

A sample test of contributions revealed that TFS did not itemize 15% of the contributions from individuals on Schedules A as required. The Audit staff recommended that TFS file amended Schedules A, by reporting period, to disclose contributions not previously itemized. (For more detail, see p. 13)

Finding 6. Failure to Itemize Contributions from Political Committees

TFS did not itemize 80 contributions totaling \$134,597 received from political committees. The Audit staff recommended that TFS file amended Schedules A disclosing the contributions not previously itemized. (For more detail, see p. 14)

Finding 7. Disclosure of Proceeds from Joint Fundraising Activity

TFS failed to properly disclose the receipt of net proceeds from joint fundraising activity with Louisiana Victory 2002 Fund and Terrell Victory Committee. The Audit staff recommended that TFS file amended reports to correctly disclose these receipts. (For more detail, see p. 15)

Finding 8. Disclosure of Occupation and Name of Employer

TFS did not adequately disclose occupation and/or name of employer information for 1,173 contributions from individuals totaling \$812,585. In addition, TFS did not demonstrate best efforts to obtain, maintain and submit the information. The Audit staff recommended that TFS either: provide documentation that demonstrates best efforts were made to obtain the missing information or contact each contributor lacking the information, submit evidence of such contact, and disclose any information received in amended reports. (For more detail, see p. 16)

Finding 9. Failure to File 48-Hour Notices

TFS failed to file 48-hour notices for 77 contributions totaling \$106,100. The Audit staff recommended that TFS provide evidence that 48-hour notices were timely filed. (For more detail, see p. 17)

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Part IV

Findings and Recommendations

The following findings were discussed with the TFS' representative at the exit conference. Appropriate workpapers and supporting schedules were provided.

The interim audit report (IAR) was forwarded to TFS for response on May 21, 2004. The Audit staff contacted counsel for the committee and verified receipt of the report. The response was due on June 23, 2004. TFS requested and received a 15-day extension to July 8, 2004 to respond to the IAR. On July 20, 2004, TFS submitted (draft) amended reports for the Audit staff's review prior to filing them with the Commission. Our review indicated the amendments were deficient; materially resolving only two of the findings. This information was relayed to TFS representatives via email on July 21, 2004. TFS representatives indicated they are working on a response. To date, no further response has been received; nor amended reports filed with the Commission.

Finding 1. Receipt of Prohibited Corporate Contributions

Summary

TFS received 65 prohibited contributions totaling \$64,600 from 47 Limited Liability Companies (LLCs) and corporate entities. The Audit staff recommended that TFS either provide evidence that these contributions were not from prohibited sources or refund the \$64,600.

Legal Standard

A. Receipt of Prohibited Contributions – Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
 2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
- 2 U.S.C. §§441b, 441c, 441e, and 441f.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

C. Application of Limits and Prohibitions to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below.

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- **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by a partnership is attributed to each partner in direct proportion to his or her share of the partnership profits. 11 CFR §§110.1(e)(1) and (g)(2).
- **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
- **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

D. Limited Liability Company's Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

E. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

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Facts and Analysis

A review of contributions received by TFS resulted in the identification of 65 prohibited contributions from 47 different corporate entities totaling \$64,600.² Of these prohibited contributions:

- TFS received directly 46 prohibited contributions, which totaled \$43,400. Of these, 27 contributions, totaling \$32,750, were from LLCs but lacked the necessary documentation to establish that contributing entities are not treated as corporations for tax purposes, and 19, totaling \$10,650, were from corporate entities. During the course of the audit, TFS provided photocopies of letters, dated August, 2003, sent to the corporate entities that were returned by the contributors acknowledging their corporate status. Three of the letters were returned to TFS as undeliverable. Further, the Audit staff contacted the appropriate Secretary of State's office to confirm the corporate status for the 19 contributions from corporate entities. None of the contributions have been refunded.
- In addition, TFS received 19 contributions from limited liability companies, totaling \$21,200, as part of a transfer of proceeds from a joint fundraiser conducted by the Louisiana Victory 2002 Fund. As with the other contributions from LLCs, TFS records did not contain any notifications from these contributors stating they were eligible to make such a contribution.

At the exit conference, the Audit staff provided TFS representatives with a schedule of the prohibited contributions. As part of documentation submitted subsequent to the exit conference, TFS representatives confirmed that the 46 contributions (\$43,400) received were from prohibited sources. They further indicated that letters will be sent relative to the other 19 contributions received from LLCs requesting their IRS filing status.

Interim Audit Report Recommendation

The Audit staff recommended that TFS provide evidence that the 19 contributions (\$21,200) received as part of proceeds from a joint fundraiser are not prohibited. Absent such evidence, TFS should have refund the \$64,600 in contributions and provided copies (front and back) of each negotiated refund check. If funds were not available to make the necessary refunds, the amounts due should have been disclosed on Schedule D (Debts and Obligations) until funds become available to make the refunds.

Finding 2. Receipt of Contributions that Exceed Limits

Summary

A review of contributions from individuals and political committees identified 541 contributions, totaling \$552,773, which exceeded the contribution limits. In some instances the contributions were solicited after the election to which they relate but there

² If some of the possible prohibited contributions from LLC's (limited liability corporations) are determined to have an IRS filing status of partnership and no longer prohibited, the Audit staff will evaluate them as possible excessive contributions.

were insufficient net debts to allow TFS to keep the contribution. The Audit staff recommended that TFS either provide evidence that the identified contributions were not in excess of the limitations or refund \$552,773.

Legal Standard

A. Authorized Committee Limits. An authorized committee may not receive more than a total of \$1,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §§441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Contributions to Retire Debts. If an authorized candidate committee has net debts outstanding after an election is over, a campaign may accept contributions after the election to retire the debts provided that:

- The contribution is designated for that election (since an undesignated contribution made after an election counts toward the limit for the candidate's upcoming election);
- The contribution does not exceed the contributor's limit for the designated election; and
- The campaign has net debts outstanding for the designated election on the day it receives the contribution. 11 CFR §110.1(b)(3)(i) and (iii).

D. Revised Regulations Applied. The Commission recently adopted new regulations that allow committees greater latitude to designate contributions to different elections and to reattribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulations.

Facts and Analysis

Ms. Terrell participated in three elections in 2002; a primary that consisted of filing the necessary papers to qualify for the general election ballot, a general election, and because no candidate received more than 50% of the vote in the general election, a runoff. A

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review of contributions from individuals and political committees identified 541 contributions, totaling \$552,773³, that exceeded the contribution limits for the primary, general or runoff elections. In some cases the contributions were received after an election at a time when the Audit staff determined there were no net debts outstanding. The Audit staff noted that a significant portion of these excessive contributions resulted from TFS receiving \$3,000 contributions from contributors after the general election.

- As of August 23, 2002, the date of the primary election, the Audit staff calculated that TFS did not have net debts outstanding. The Audit staff identified certain contributor checks dated and received subsequent to the primary election that were designated by the contributors for that election. TFS received 79 such contributions totaling \$115,500. These contributions were not later redesignated by the contributor to another election and should have been refunded. In addition, one excessive contribution for \$1,000 was received prior to the primary, which could neither be reattributed nor redesignated.
- As of November 5, 2002, the date of the general election, the Audit staff calculated that TFS had net debts outstanding of \$157,802. The Audit staff identified contributions totaling \$430,750 received after the general election some of which were designated specifically for the general election and some of which were the undesignated, excessive portions of run-off contributions that could be applied to general election debt. These contributions were applied to the general debt in chronological order until the debt was exhausted. A review of the remaining contributions determined that TFS received 63 contributions designated for the general election, which exceeded the amount needed to retire the net debts outstanding for the general election by a total of \$68,398. The remaining undesignated, excessive run-off contributions that could not be applied to general election debt are included in the excessive run-off contributions discussed below.
- The Audit staff determined that TFS had received 398 excessive contributions totaling \$367,875 relative to the runoff election. These excessive contributions were all received prior to December 7, 2002, the date of the runoff election.

At the exit conference, the Audit staff provided TFS representatives with a schedule of the excessive contributions noted above. TFS representatives had no comment. Subsequent to the exit conference, TFS stated that they lack sufficient cash on hand to make the refunds but would amend its reports to include all excessive contributions as debts on Schedule D.

Interim Audit Report Recommendation

The Audit staff recommended that TFS:

- Provide evidence that the identified contributions were either not excessive or were applicable to a net debt outstanding for a particular election; or

³ The Audit staff's analysis of TFS account balances through the end of the audit period indicated sufficient balances were maintained so that contributions designated for a particular election were not used for earlier elections.

- Refund \$552,773 and provide evidence of such refunds (copies of the front and back of the cancelled checks); and
- If funds were not available to make the necessary refunds, TFS should have amended its reports to reflect the amounts to be refunded as debts on Schedule D (Debts and Obligations Excluding Loans) until funds become available to make the refunds.

Finding 3. Receipt of Bank Loan

Summary

The Candidate loaned TFS \$101,000 from the proceeds of a bank loan. The Audit staff was unable to determine if the bank perfected its security interest in collateral for the loan. The Audit staff recommended that TFS provide documentation to show the loan was properly secured.

Legal Standard

Loans Excluded from the Definition of Contribution. The term "contribution" does not include a loan from a State or federal depository institution if such loan is made:

- in accordance with applicable banking laws and regulations;
- in the ordinary course of business;
- on a basis which assures repayment, as evidenced by a written instrument; and
- bearing the usual and customary interest rate of the lending institution. 2 U.S.C. §431(8)(A)(vii); 11 CFR §100.7(b)(11).

Assurance of Repayment. Commission regulations state a loan is considered made on a basis which assures repayment if the lending institution making the loan has:

- Perfected a security interest in collateral owned by the candidate or political committee receiving the loan.
- Obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments.
- If these requirements are not met, the Commission will consider the totality of circumstances on a case by case basis in determining whether the loan was made on a basis which assured repayment. 11 CFR §§100.7(b)(11) and 100.8(b)(12).

Facts and Analysis

On August 2, 2002, the Candidate obtained a \$101,000 loan from First Bank and Trust (FBT) which included a \$1,000 prepaid finance charge and had a maturity date of August 2, 2003. On August 5, 2002, the Candidate loaned TFS \$100,000 from the proceeds of this bank loan. The loan was repaid by TFS with a direct payment to the bank on December 16, 2002, in the amount of \$101,358, which included \$1,358 in finance charges. TFS provided the Audit staff with a copy of the promissory note between the Candidate and the bank that states that collateral securing other loans with Lender may also secure this note; referencing it as "cross-collateralization." Further, a business loan agreement submitted with the promissory note specifies the borrower is granting a "continuing security interest" in any and all funds the borrower may now or in the future have on deposit at FBT.

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The loan documentation provided neither described the collateral intended to secure this loan, nor indicated that such security interest had been perfected. The Candidate's financial statement, presumably submitted as part of the application process, fails to provide any specific information of other debts owed to FBT which could be subject to "cross-collateralization." Further, the financial statement states the borrower has no accounts at FBT. Therefore, it is the Audit staff's opinion that the loan does not meet the Commission's "assurance of repayment" standard.

At the exit conference, the Audit staff presented this matter to TFS representatives. No questions or comments were posed by the representatives.

Interim Audit Report Recommendation

The Audit staff recommended that TFS provide documentation to show that the loan was secured with collateral that assures repayment; that the security interest in the collateral had been perfected; and/or provide any comments it feels are relevant. Such documentation should have included a description and valuation of the collateral as well as the balance of all other outstanding debt secured by such collateral.

Finding 4. Misstatement of Financial Activity

Summary

TFS misstated receipts, disbursements, and the ending cash balance during 2002. The Audit staff recommended that TFS amend its reports to correct the misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
 - The total amount of receipts for the reporting period and for the calendar year;
 - The total amount of disbursements for the reporting period and for the calendar year; and,
 - Certain transactions that require itemization on Schedule A or Schedule B.
- 2 U.S.C. §§434(b)(1), (2), (3), and (4).

Facts and Analysis

The Audit staff reconciled reported financial activity to bank records for 2002. The following chart outlines the discrepancies for receipts, disbursements, and the ending cash balance on December 31, 2002. Succeeding paragraphs address the reasons for the misstatements, most of which occurred during the period after the general election. TFS representatives indicated that during that period the volume of activity and staff turnover contributed to lapses in the data entry of some receipt and disbursement transactions.

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2002 Campaign Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ July 19, 2002	\$0	\$0	\$0
Receipts	\$3,379,343	\$4,072,919	\$693,576 Understated
Disbursements	\$2,760,279⁴	\$3,721,155	\$960,876 Understated
Ending Cash Balance @ December 31, 2002	\$633,564⁴	\$351,764	\$281,800 Overstated

The understatement of receipts was the net result of the following:

• Transfer of funds from joint fundraisers not reported (see Finding 7)	+	\$ 302,000
• Transfer from joint fundraiser reported incorrectly (see Finding 7)	-	157,500
• Contributions from political committees not reported (see Finding 6)	+	134,597
• Deposits which appear not to have been reported (see Finding 5)	+	405,713
• Unexplained differences	+	<u>8,766</u>
Net Understatement of Receipts		\$ 693,576

The understatement of disbursements was the net result of the following:

• Payments to media vendor not reported	+	\$ 685,000
• Bank Loan Repayments not reported	+	301,422
• Miscellaneous Operating Expenses not reported	+	3,006
• Disbursements Reported Twice	-	9,000
• Disbursements Reported - Unsupported by Check or Debit Memo	-	15,000
• Reported Void Check	-	12,834
• Unexplained Differences	+	<u>8,282</u>
Net Understatement of Disbursements		\$ 960,876

TPS misstated the cash balance throughout 2002 because of the errors described above. In addition, an incorrect cash balance was carried forward from the 30 Day Post Election Report to the Year End Report which resulted in an overstatement of the cash balance by \$14,500. On December 31, 2002, the cash balance was understated by \$281,800.

At the exit conference, the Audit staff explained the misstatements and provided schedules of the reporting discrepancies. TPS representatives stated their intention to review the spreadsheets provided and expressed a willingness to file amended reports to correct these misstatements.

⁴ This total does not foot; see explanation of ending cash balance below.

Interim Audit Report Recommendation

The Audit staff recommended that TFS file amended reports, by reporting period, to correct the misstatements noted above, including amended Schedules A and B as appropriate.

Finding 5. Failure to Itemize Contributions from Individuals

Summary

A sample test of contributions revealed that TFS did not itemize 15% of the contributions from individuals on Schedules A as required. The Audit staff recommended that TFS file amended Schedules A, by reporting period, to disclose contributions not previously itemized.

Legal Standard

A. When to Itemize. Authorized candidate committees must itemize any contribution from an individual if it exceeds \$200 per election cycle either by itself or when aggregated with other contributions from the same contributor; 2 U.S.C. §434(b)(3)(A).

B. Election Cycle. The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. 11 CFR §100.3(b).

C. Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- The election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

Facts and Analysis

Based on a sample review of contributions from individuals, the Audit staff determined that TFS did not itemize 15% of such contributions on Schedules A as required. The majority of these errors resulted from contributions that were part of December 2002 deposits not entered into the database TFS used to file its disclosure reports (See Finding 4, Misstatement of Financial Activity). On October 10, 2003, TFS provided an up-dated receipts database which included the missing contributions for the month of December 2002.

At the exit conference, the Audit staff presented this matter to TFS representatives who had no questions or comments at that time. As part of documentation submitted

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subsequent to the exit conference, TFS stated it is in the process of amending its reports to disclose all omitted individual donors.

Interim Audit Report Recommendation

The Audit staff recommended that TFS file amended Schedules A, by reporting period, to correct the deficiencies noted above.

Finding 6. Failure to Itemize Contributions from Political Committees

Summary

TFS did not itemize 80 contributions totaling \$134,597 received from political committees. The Audit staff recommended that TFS file amended Schedules A disclosing the contributions not previously itemized.

Legal Standard

A. When to Itemize. Authorized candidate committees must itemize:

Every contribution from any political committee, regardless of the amount; and
Every transfer from another political party committee, regardless of whether the committees are affiliated. 2 U.S.C. §434(b)(3)(B) and (D).

B. Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

The amount of the contribution;

The date of receipt (the date the committee received the contribution);

The full name and address of the contributor; and

Election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

Facts and Analysis

A review of all contributions received from political committees identified 80 contributions totaling \$134,597 which were not itemized on Schedules A of disclosure reports filed by TFS. Similar to Contributions from Individuals discussed above, the majority of these errors resulted from contributions that were part of December 2002 deposits not entered into the database TFS used to file its disclosure reports (See Finding 4, Misstatement of Financial Activity).

At the exit conference, the Audit staff provided TFS representatives with a schedule of the political committee contributions not itemized. TFS representatives stated they would review the spreadsheets provided and make appropriate changes to TFS reports.

Interim Audit Report Recommendation

The Audit staff recommended that TFS file amended Schedules A, by reporting period, disclosing the contributions not previously itemized.

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Finding 7. Disclosure of Proceeds from Joint Fundraising Activity

Summary

TFS failed to properly disclose the receipt of net proceeds from joint fundraising activity with Louisiana Victory 2002 Fund and Terrell Victory Committee. The Audit staff recommended that TFS file amended reports to correctly disclose these receipts.

Legal Standard

A. Itemization of Contributions From Joint Fundraising Efforts. Participating political committees must report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and must also file a memo Schedule A itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR 104.3(a). 11 CFR §102.17(c)(8)(i)(B).

Facts and Analysis

The Audit staff determined that TFS received a total of \$420,500 in net proceeds from joint fundraising activity; \$396,000 from the Louisiana Victory 2002 Fund and \$24,500 from the Terrell Victory Committee. Our review of these transfers noted the following:

- TFS did not report nor itemize transfers totaling \$295,000 from Louisiana Victory 2002 Fund and \$7,000 received from Terrell Victory Committee on Schedule A, line 12, Transfers from Other Authorized Committees, as required. (See Finding 4)
- TFS incorrectly disclosed the amount of a transfer received from Terrell Victory Committee as \$175,000, when the actual amount of the transfer was \$17,500, overstating reported receipts by \$157,500. (See Finding 4)
- TFS did not itemize its share of the gross receipts as contributions from the original contributors as required on memo Schedules A for any of the \$420,500 in transfers of joint fundraising proceeds. TFS records did not contain this information. During fieldwork, TFS obtained the information from both of the joint fundraising committees.

At the exit conference, the Audit staff provided TFS representatives a schedule of the omitted transfers from joint fundraising activity noted above. TFS representatives stated their intention to review the spreadsheets provided and expressed a willingness to file amended reports to correctly report its activity.

Interim Audit Report Recommendation

The Audit staff recommended that TFS file amended Schedules A to disclose the receipt of net fundraising proceeds, along with the required memo entries.

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Finding 8. Disclosure of Occupation and Name of Employer

Summary

TFS did not adequately disclose occupation and/or name of employer information for 1,173 contributions from individuals totaling \$812,585. In addition, TFS did not demonstrate best efforts to obtain, maintain and submit the information. The Audit staff recommended that TFS either: provide documentation that demonstrates best efforts were made to obtain the missing information or contact each contributor lacking the information, submit evidence of such contact, and disclose any information received in amended reports.

Legal Standard

A. Required Information for Contributions from Individuals. For each itemized contribution from an individual, the committee must provide the contributor's occupation and the name of his or her employer. 2 U.S.C. §431(13) and 11 CFR §§100.12.

B. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - A statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

The Audit staff reviewed all contributions from individuals itemized on Schedules A of TFS disclosure reports, which were in an amount or aggregate greater than \$200 for adequate disclosure of occupation and/or name of employer. The review identified 1,173 contributions from 939 contributors, totaling \$812,585, that did not have an occupation and/or name of employer disclosed properly. Of the 1,173 errors identified, 1,080 (92.07%) were blank, disclosed as "N/A" or "Information Requested." The remaining errors (7.93%) consisted of incomplete disclosures (for example, an employer was disclosed but no occupation). It was noted that TFS solicitation devices properly

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contained a request for occupation and name of employer. However, the records provided to the Audit staff did not contain any follow-up requests for the missing contributor information. As such, TFS does not appear to have made "best efforts" to obtain, maintain and report occupation and name of employer information. At the exit conference, the Audit staff provided TFS representatives with a schedule of the individuals for which occupation and/or name of employer was not properly disclosed. TFS representatives stated they would review the spreadsheets provided and would file amended reports to correctly report this activity.

Interim Audit Report Recommendation

The Audit staff recommended that TFS take the following action:

- Provide documentation such as phone logs, returned contributor letters, completed contributor contact information sheets or other materials which demonstrated that best efforts were made to obtain, maintain, and submit the required disclosure information; or
- Absent such a demonstration, TFS should have made an effort to contact those individuals for whom required information is missing or incomplete, provided documentation of such contacts (such as copies of letters to the contributors and/or phone logs), and amended its reports to disclose any information obtained from those contacts.

Finding 9. Failure to File 48-Hour Notices

Summary

TFS failed to file 48-hour notices for 77 contributions totaling \$106,100. The Audit staff recommended that TFS provide evidence that 48-hour notices were timely filed.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed those contributions of \$1,000 or more that were received during the 48-hour notice filing period for the primary, general and runoff elections. TFS failed to file 48-hour notices for 77 contributions totaling \$106,100 as summarized on the next page.

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Election Type	Number of Notices	Total
Primary	1	\$1,000
General	6	\$6,000
Runoff	70	\$99,100
48 Hour Notices Not Filed	77	\$106,100

At the exit conference, TFS was provided a schedule of the 48-hour notices not filed. TFS representatives stated they would review the spreadsheets and provide additional documentation that would reduce the number of errors.

Interim Audit Report Recommendation

The Audit staff recommended that TFS provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant.

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